

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act).

Chamber Ref: FTS/HPC/CV/20/0300

Re: Property at 16/3 Craighend Park, Liberton, Edinburgh, EH16 5XX (“the Property”)

Parties:

Mr Robert Cook, Mrs Avril Cook, 16/8 Craighend Park, Liberton, Edinburgh, EH16 5XX (“the Applicant”)

Mr Bruce Edwards, Mrs Angela Edwards, 131 Meadowspot, Edinburgh, EH10 5UY (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

This is an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act in respect of a claim for reimbursement of rent paid (£1,650) and damages of £3,000 during a tenancy of the Property.

The Tribunal had regard to the following documents:

1. Application received 29 January 2020;
2. SAT commencing 1 March 2019;
3. AT5 dated 1 February 2019;
4. Rent receipt dated 1 July 2019;
5. City of Edinburgh Council Tax letter dated 6 April 2019;
6. RBS Bank Statements for period 1 May to 4 June 2019;
7. Written Representations from the Respondent dated 9 March 2020 enclosing:
 - a. Quotation dated 10 January 2019 from Stevenswood;
 - b. Quotation dated 30 January 2019 from Access Builders.
8. Written Representations from the Respondent dated 12 November 2020 enclosing:
 - a. Undated Letter from Greg McKenzie;

- b. Home Report on the Property dated 30 August 2019.
9. Written Representations from Applicant dated 29 November 2020.

The case had called for a CMD on 5 November 2020 at which the following facts were agreed:

1. The Parties entered into an SAT in respect of the Property commencing 1 March 2019;
2. The Monthly rent was £550;
3. The SAT terminated with effect from 28 August 2019;
4. During the tenancy the Applicants paid the sum of £1,650 in respect of rent to the Respondents;
5. The mirrored door in the bedroom was off its runners and the runners required to be replaced.

The Tribunal had noted the following issues to be determined at the Hearing:

1. Whether the Respondents provided the Applicants with a key, entry and possession at the commencement of the tenancy;
2. Whether the Respondents told the Applicants that the Property needed renovation and repair prior to occupation;
3. Whether the Property was fit for habitation at the commencement of the tenancy and through the duration of the tenancy;
4. Whether the defects claimed by the Applicants were observed by them in June 2019 and notified to the Respondents;
5. If entry and possession had not been provided and the Property was not fit for habitation whether the Applicants were entitled to repayment of the rent they had paid in the sum of £1,650;
6. If entry and possession had not been provided and the Property was not fit for habitation whether the Applicants were entitled to repayment of the £3,000 they had paid for alternate accommodation after termination of the SAT.

The Tribunal had discussed who would be witnesses and it was identified that the Applicants would both give evidence as would the First Named Respondent.

Hearing

The case called for a Hearing by conference call on 15 December 2020. The Applicants participated and represented themselves. The First Named Respondent participated and represented himself.

The Tribunal set out the process to be followed at the Hearing and reminded Parties of the issues in dispute and to be determined by the Tribunal.

The Tribunal then heard evidence from the Parties which in so far as was material and relevant was as follows:

Mr and Mrs Cook

Their evidence was that they entered into the SAT commencing 1 March 2019 until it was terminated on 28 August 2019. During that period, they paid £1,650 in respect of rent (£55 on 1 May 2019, £495 on 2 May 2019, £550 on 31 May 2019, and £550 on 1 July 2019). They were never given a key to the Property and, at the outset, were told that the flat needed renovation and repair. They were allowed to look inside the flat in June 2019 and identified the issues with the Property set out in paragraph 6 of the Paper Apart accompanying their application. As such, the Property was not fit for habitation.

Mr Cook advised Mr Edwards of the issues with the flat. The issues identified by Mr and Mrs Cook were:

1. Toilet not working – Mr Cook conceded that Mr Edwards told him it was not working and had not tried it himself;
2. Electrical cables hanging out of holes in the wall – Mr Cook conceded these were Sky cables in the lounge and bedroom;
3. Mirrored Cupboard Doors were off their tracks and lying on the floor;
4. The Cooker was filthy – Mr and Mrs Cook conceded that they had not tried the cooker to see if it was working;
5. There was a damp patch in the hall cupboard which may have arisen due to a previous flooding of the Property.

Both Mr and Mrs Cook said that they paid the rent for Mr Edwards to “keep the flat for them”.

When asked why they had continued to pay rent after June 2019 their answer was that they had been “stupid” and wished the flat kept for them.

Due to the SAT being terminated on 28 August 2019 they had to source alternate accommodation which cost them £3,000 in respect of rent. It was not possible to source suitable alternate accommodation at such short notice and they had arranged with the purchaser of their property to remain in the property until 31 January 2020 at a monthly rent of £1,000.

The Applicants assert that they would not have incurred the £3,000 cost had they been able to gain entry to and occupy the Property.

Mr Cook referred to the letter he had sent to the Tribunal on 29 November 2020 as evidence of the fact that Mr Edwards was not a registered landlord.

Mr Edwards

His evidence was that the works in the Property had been completed early in 2019 and the Property was fit for habitation at the commencement of the SAT on 1 March 2019. He had offered access and keys but the Applicants didn't want to move in until they had sold their property.

In the meantime Mr Edwards had decided to paint, decorate and partially re-carpet the Property. He had this done during the period March to June 2019.

The Applicants had viewed the Property immediately prior to March 2019 and had not raised any issues.

The Applicants had again viewed the Property in June 2019 with him. He accepted that there was an issue with a mirrored door in the bedroom which was off its runners and he explained to the Applicants at the viewing that the cap off the flush on the WC was missing but the WC still worked. Beyond that no issues were raised.

The loose cable was a Sky cable. The cooker could easily have been cleaned but was functional. He would have replaced the runners for the mirrored doors. The damp patch was just marks that had been left following a previous flood from the flat above.

Mr Edwards considered that the Respondents were not liable for the costs of alternate accommodation incurred after termination of the SAT.

He accepted that he was not registered as a landlord and did not know that he had to be. He did not let any other properties and this one had been sold.

Submissions

The Parties did not make submissions.

Findings in Fact

Having heard and considered the Parties oral and documentary evidence, the Tribunal, in so far as was material, made the following findings in fact:

1. The Parties viewed the Property prior to entering into the tenancy and no issues were raised regarding its condition at that time;
2. The Parties entered into an SAT in respect of the Property commencing 1 March 2019;
3. The Monthly rent was £550;
4. The Applicants paid £1,650 in respect of rent (£55 on 1 May 2019, £495 on 2 May 2019, £550 on 31 May 2019, and £550 on 1 July 2019);
5. The Applicants did not take entry and possession of the Property as they still had their own Property to sell;
6. The Applicants paid rent to the Respondents for them to “keep” the Property for them;
7. At the viewing in June 2019 Mr Edwards told the Applicants that the cap off the flush on the WC was missing but the WC still worked;
8. At the viewing in June 2019 the mirrored doors were off their runners and the runners required to be replaced, the cooker was filthy, sky cables protruded from holes in the walls in the lounge and bedroom, there was a damp stain mark in the hall cupboard from a previous flood;
9. The Applicants did not inform the Respondents of the issues identified by them at the June 2019 viewing;
10. The SAT terminated with effect from 28 August 2019;
11. The Applicants had remained in their property and had to pay rent to the new owner from 1 November 2019 at the rate of £1,000 per month.

Decision and Reasons

The Tribunal considered the six issues and found as follows:

1. Whether the Respondents provided the Applicants with a key, entry and possession at the commencement of the tenancy?

The Tribunal found that a key, entry and possession had been offered at the commencement of the SAT. The Applicants had not taken entry due to the desire to sell their Property first. They were paying rent to the Respondents to “keep” the property for them. Both Mr and Mrs Cook’s evidence confirmed this and as such the Tribunal considered that it was their choice not to take occupation and possession at the time.

2. Whether the Respondents told the Applicants that the Property needed renovation and repair prior to occupation?

The Tribunal found that the Respondents had not told the Applicants that the Property needed renovation and repair prior to occupation. The Applicants had chosen not to occupy until they had sold their property. Mr Edwards had decided to paint, decorate and re-carpet the Property of his own volition.

The Tribunal considered that the fact the Applicants had not raised any issues with their first viewing of the Property, had paid rent to “keep” the Property and had identified minor issues at the inspection in June 2019 was consistent with that version of events.

3. Whether the Property was fit for habitation at the commencement of the tenancy and through the duration of the tenancy?

The only evidence of defects within the Property were from the viewing in June 2019.

The Tribunal considered that the issues identified by the Applicants as constituting “defects” were insignificant and did not render the Property as being unfit for habitation. By their own admission the Applicants had not tried the WC or the cooker to see if they were working. The Tribunal accepted Mr Edwards’s evidence that they were working.

It was conceded by Mr Cook that the protruding cable was a Sky cable. The Tribunal accordingly found that this did not constitute a hazard or a safety concern.

It was accepted that the mirrored doors needed new runners. Once again the Tribunal found that this did not render the Property as unfit for habitation.

The Tribunal found that the damp patch referred to in the cupboard by Mr Cook was a historic stain left from a previous flood.

Accordingly, the Tribunal could not find that the Property did not comply with the Repairing Standard or that it was unfit for habitation either at commencement or during

the tenancy. This was also supported by the fact that the Applicants had continued to pay rent after the viewing in June 2019.

4. Whether the defects claimed by the Applicants were observed by them in June 2019 and notified to the Respondents?

The only issues raised in June 2019 were the mirrored doors and WC both of which were raised by Mr Edwards.

By their own admission the Applicants had not tested either the cooker or the WC. Mr Cook accepted that the wire was a Sky cable.

The Tribunal accepted Mr Edwards's evidence on these points which was consistent with his version of events and supported by the fact that the Applicants had continued to pay rent after the viewing in June 2019.

5. If entry and possession had not been provided and the Property was not fit for habitation whether the Applicants were entitled to repayment of the rent they had paid in the sum of £1,650?

As the Tribunal have found entry and possession was offered and the Property was fit for habitation no sums are due to the Applicants.

6. If entry and possession had not been provided and the Property was not fit for habitation whether the Applicants were entitled to repayment of the £3,000 they had paid for alternate accommodation after termination of the SAT?

As the Tribunal have found entry and possession was offered and the Property was fit for habitation no sums are due to the Applicants. In any event, even if the Tribunal had found in favour of the Applicants no award would have been made in respect of this claim. The Applicants would have needed to pay for accommodation from 1 November 2019 irrespective.

The Tribunal did not find any breach of contract on the Respondents' part.

Accordingly the Tribunal determined that the application be refused.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Alan Strain

15 December 2020

Legal Member/Chair

Date